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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 MARCO SANTIAGO,

11 Plaintiff,

12 v.

13 BARRY WILKINSON et al.,

14 Defendants.

CASE NO. 3:20-CV-05538-RSL-DWC

ORDER

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16 The District Court has referred this 42 U.S.C. § 1983 action filed by Plaintiff to United  
17 States Magistrate Judge David W. Christel. Before the Court are two motions: Plaintiff's Motion  
18 for Reconsideration of the Court's Order to Seal Discovery (Dkt. 38, "Motion for  
19 Reconsideration") and Defendants' Amended Motion to Strike Motion to Seal and Supporting  
20 Declaration of Marco Santiago) (Dkt. 46, "Motion to Strike").

21 The Court denies the Motion for Reconsideration (Dkt. 38) as moot. The Motion to Strike  
22 is granted in part and denied in part (Dkt. 46).  
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1       **1. Motion for Reconsideration (Dkt. 38)**

2       Plaintiff seeks reconsideration of the Court’s November 5, 2020 Order which directed the  
3 pages if *How to Train Your Devil* (Dkt. 32, Exhibit 1; hereinafter “Exhibit 1”) remain sealed.  
4 Dkt. 36. Plaintiff argues the Court should allow Plaintiff to review the sealed evidence with a  
5 prison counselor or other staff member. Dkt. 38.

6       On November 12, 2020, the Court ordered Defendants to respond to Plaintiff’s Motion  
7 for Reconsideration. Dkt. 39. Following receipt of the Court’s November 12, 2020 Order,  
8 counsel for Defendants coordinated with the Legal Liaison at Stafford Creek Correctional Center  
9 (“SCCC”) to facilitate Plaintiff’s viewing of Exhibit 1. Dkt. 43. On November 16, Plaintiff  
10 viewed the Exhibit 1 with Corrections Counselor Paul Nelson for approximately 45 minutes.  
11 Dkt. 43; Dkt. 44 (Declaration of Sarah Brisbin). In Reply, Plaintiff acknowledges Plaintiff  
12 viewed all twenty pages of sealed discovery (Exhibit 1) on November 13, 2020 and November  
13 16, 2020.<sup>1</sup> Dkt. 48 at 7-8.

14       Plaintiff has now been provided with an opportunity to review Exhibit 1. *See* Dkt. 43, 44,  
15 48. Because any relief sought in the Motion for Reconsideration has been provided, the Court  
16 denies the Motion for Reconsideration as moot. *See Burnett v. Lampert*, 432 F.3d 996, 999 (9th  
17 Cir. 2005) (As the Supreme Court has explained, the doctrine of mootness requires “the plaintiff  
18 ‘must have suffered, or be threatened with, an actual injury traceable to the defendant and likely  
19 to be redressed by a favorable judicial decision.’”) (quoting *Spencer v. Kemna*, 523 U.S. 1, 7  
20 (1998)); *Zahler v. McCarthy*, 2009 WL 2604650, at \*1 (E.D. Wash. Aug. 20, 2009) (denying

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22       <sup>1</sup> Plaintiff’s Motion for Reconsideration and Reply repeatedly contest the merits of the underlying case. *See*  
23 Dkt. 38, 48. However, a ruling on Plaintiff’s Motion for Reconsideration, or Defendants’ Motion to Seal, does not  
24 affect a ruling on the merits which will be addressed in a separately filed report and recommendation on the parties’  
cross-Motions for Summary Judgment, which are currently noted for the Court’s consideration on January 11, 2021.  
*See* Dkt. 19, 29, 39.

1 motion for reconsideration as moot because the remedy plaintiff sought was already given to  
2 him).

3 **2. Motion to Strike (Dkt. 46)**

4 Defendants move for the Court to strike Plaintiff's Surreply and two Declarations (Dkts.  
5 40, 41 (Declaration), 42 (Second Declaration)). Dkt. 46.

6 *A. Surreply and Declaration (Dkt. 40, 41)*

7 On November 20, 2020, Plaintiff filed a Surreply and Declaration without leave of Court.  
8 Dkt. 40, 41. Defendants move for the Court to strike Plaintiff's Surreply and Declaration (Dkt.  
9 40, 41). Dkt. 46.

10 Pursuant to Local Rule CR 7(g)(2), surreplies are limited to requests to strike material  
11 contained in or attached to a reply brief. "Extraneous argument or a surreply filed for any other  
12 reason will not be considered." *Id*; *see also Hernandez v. Stryker Corp.*, 2015 WL 11714363, at  
13 \*2 (W.D. Wash. Mar. 13, 2015).

14 Plaintiff does not request to strike material contained in Defendants' Reply; rather,  
15 Plaintiff provides additional argument. *See* Dkt. 40, 41. Therefore, the Court grants Defendants'  
16 Motion to Strike and directs the Clerk to strike Plaintiff's Surreply and Declaration (Dkt. 40, 41).  
17 The Court will not consider docket entries 40 and 41 when ruling on the parties Cross-Motions  
18 for Summary Judgment (Dkt. 19, 29). Because the Court strikes the Surreply and Declaration,  
19 the Court need not address Defendants argument the Declaration (Dkt. 41) was improperly filed  
20 under seal.

1        *B. Second Declaration filed under Seal (Dkt. 42)*

2        On November 23, 2020, Plaintiff filed a Second Declaration under seal in support of the  
3 Motion for Reconsideration (Dkt. 38). Dkt. 42. Defendants move for the Court to strike the  
4 Second Declaration as Plaintiff did not cite a statute, rule or prior Court order authorizing filing  
5 under seal. Dkt. 46 at 3.

6        Plaintiff's Second Declaration contains 28 pages of exhibits which Plaintiff filed in  
7 support of Plaintiff's Motion for Reconsideration. Dkt. 42. The Second Declaration and attached  
8 exhibits were *sua sponte* filed under seal by the Court due to the sexually explicit nature of the  
9 attachments. *See id.* *See* LCR 5(g); Fed. R. Civ.P 5(e) (authorizing the court, for good cause, to  
10 enter a protective order to redact information or limit or prohibit a non-party's access to a  
11 document); *San Ramon Reg'l Med. Ctr., Inc. v. Principal Life Ins. Co.*, 2011 WL 89931, at \*1  
12 (N.D. Cal. Jan. 10, 2011) (*sua sponte* sealing confidential medical information which outweighed  
13 any necessity for disclosure); *Self v. Horel*, 2008 WL 4774457, at \*3 (N.D. Cal. Oct. 30, 2008)  
14 (granting motion to seal sexually explicit material containing frontal nudity and depictions of  
15 male and female genitalia).

16        As an initial matter, in light of the Court's finding the Motion for Reconsideration (Dkt.  
17 38) is moot, Defendants' Motion to Strike the Second Declaration (Dkt. 42) filed in support of  
18 the Motion for Reconsideration also appears to be moot as well. Moreover, pursuant to Federal  
19 Rule of Civil Procedure 12(f), "[t]he court may strike from a pleading an insufficient defense or  
20 any redundant, immaterial, impertinent, or scandalous matter." Plaintiff's Second Declaration  
21 (Dkt. 42) does not appear to meet any of the aforementioned criteria. To the extent the Second  
22 Declaration (Dkt. 42) can be construed as scandalous matter due to its sexually explicit nature,  
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1 the Court has *sua sponte* ordered the Second Declaration (Dkt. 42) be sealed, and Defendants do  
2 not move for the Court to unseal the Second Declaration (Dkt. 42).

3 Therefore, the Court will not strike the Second Declaration (Dkt. 42) and the filing will  
4 remain sealed. Defendants' Motion to Strike with respect to the Second Declaration (Dkt. 42) is  
5 denied.

6 Dated this 21 day of December, 2020.

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9 David W. Christel  
United States Magistrate Judge  
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